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PATENT APPLICATION

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IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Joubert Berger et al.

Confirmation No.: 7770

Application No.: 10/013,043

Examiner: Q. Nahar

Filing Date: October 30, 2001

Group Art Unit: 2191

Title: SYSTEM AND METHOD FOR INSTALLING APPLICATIONS IN A TRUSTED ENVIRONMENT

Mail Stop Appeal Brief - Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF REPLY BRIEF

Transmitted herewith is the Reply Brief with respect to the Examiner's Answer mailed on July 13, 2007.

This Reply Brief is being filed pursuant to 37 CFR 1.193(b) within two months of the date of the Examiner's Answer.

(Note: Extensions of time are not allowed under 37 CFR 1.136(a))

(Note: Failure to file a Reply Brief will result in dismissal of the Appeal as to the claims made subject to an expressly stated new ground rejection.)

No fee is required for filing of this Reply Brief.

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Date of Transmission: September 10, 2007

Respectfully submitted,

Joubert Berger et al.

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Docket No.: 10013500-1
(PATENT)

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In re Patent Application of:
Joubert Berger et al.

Application No.: 10/013,043

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For: SYSTEM AND METHOD FOR INSTALLING
APPLICATIONS IN A TRUSTED
ENVIRONMENT

Examiner: Q. Nahar

REPLY BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under § 41.41(a)(1), this Reply Brief is filed within two months of the Examiner's Answer dated July 13, 2007, and is in furtherance of the Third Appeal Brief filed on April 5, 2007.

No fee is required for this REPLY BRIEF.

This brief contains items under the following headings pursuant to M.P.E.P. § 1208:

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I. STATUS OF CLAIMS

The status of claims remains as identified in the Third Appeal Brief:

A. Total Number of Claims in Application

There are 25 claims pending in this application.

B. Current Status of Claims

1. Claims canceled: None
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1-25
4. Claims allowed: None
5. Claims rejected: 1-25

C. Claims On Appeal

The claims on appeal are claims 1-25

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed remain as identified in the Third Appeal Brief:

- A. Claims 1-3, 6-7, 9-19, and 21-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,687,745 (*Franco*) in view of U.S. Patent No. 6,289,462 (*McNabb*);
- B. Claims 4-5, 20, and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Franco* in view of *McNabb* and further in view of U.S. Patent No. 6,550,061 (*Bearden*); and
- C. Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Franco* in view of *McNabb* and further in view of U.S. Patent No. 6,795,963 (*Anderson*).

III. ARGUMENT

Appellant hereby reasserts the arguments previously presented in the Third Appeal Brief of April 5, 2007 (*Appeal Brief*). For the sake of brevity, however, Appellant does not restate each of those arguments herein, but instead submits the following supplemental remarks in response to the Examiner's Answer of July 13, 2007 (*Examiner's Answer*).

A. Rejections Under 35 U.S.C. § 103(a) over *Franco* in view of *McNabb*

Claims 1-3, 6-7, 9-19, and 21-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Franco* in view of *McNabb*. *Examiner's Answer* at p. 3. Appellant respectfully traverses these rejections for the reasons stated below.

It is well settled that “[t]he examiner bears the initial burden of factually supporting any *prima facie* case of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” MPEP § 2142. To make a *prima facie* case of obviousness, the Examiner must determine the “scope and content of the prior art,” ascertain the “differences between the prior art and the claims at issue,” determine “the level of ordinary skill in the pertinent art,” and evaluate evidence of secondary considerations. *Graham v. John Deere*, 383 U.S. 1, 17, (1966); *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. ____ (2007); *see also* M.P.E.P. § 2141. When determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. M.P.E.P. § 2141.02(I).

The Supreme Court recently stated in *KSR* that it is “important [for an examiner] to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *KSR Int’l Co. v. Teleflex, Inc.*, No. 04-1350, slip op. at 14 (U.S. April 30, 2007). Indeed, the Court indicated that there should be an “explicit” analysis regarding “whether there was an *apparent reason* to combine the known elements *in the fashion claimed* by the patent at issue.” *Id.* (emphasis added). Further, the Court

did not totally reject the use of “teaching, suggestion, or motivation” test as a factor in the obviousness analysis. *Id.* at 14-15.

1. Insufficient Reason to Combine

The rejection of claims 1-3, 6-7, 9-19, and 21-24 should be overturned because there is insufficient reason to combine *Franco* with *McNabb*. *Franco* discloses a system for delivering information from a remote source to a client computer over a network. *Franco* at Abstract. Meanwhile, *McNabb* discloses a trusted compartmentalized operating system. *McNabb* at Abstract. Simply put, there is no apparent reason why a person of ordinary skill in the art would be inclined to combine these very disparate references. *See Appeal Brief* at pp. 10-12.

In response to Appellant’s remarks in the *Appeal Brief*, the Examiner maintains that a reason for the combination may be found in *McNabb*. *Examiner’s Answer* at p. 11. Appellant respectfully disagrees. Particularly, the portion of *McNabb* relied upon by the Examiner only states that:

[t]he ability to partition a network server is a key component of the trusted operating system of the present invention in providing the level of assurance needed to support critical network and transaction servers.

McNabb at col. 17, lns. 49-52. This passage does not support the proposed combination of *Franco* with *McNabb*. To the contrary, it states that *McNabb*’s invention itself includes a “key component” that provides the “level of assurance needed to support critical network and transaction servers.” *Id.* In other words, achieving a desired “level of assurance” is something that *McNabb*’s invention already does, even in the absence of a combination with any other reference. There is no reason why a person of ordinary skill in the art would combine *McNabb* with another reference to “add” to *McNabb* a feature that it already has.

Furthermore, contrary to the Examiner’s assertions, Appellant submits that an information delivery system such as that *Franco*’s would not improve the “level of assurance” of *McNabb*’s critical servers. *Franco*’s system merely presents applications and information to

client computers, and it is not at all concerned with the “criticality” of the network and its servers. In fact, the actual feature of *Franco* relied upon by the Examiner—*i.e.*, the graphical representation of a computer—does not provide the proffered advantage—*i.e.*, “the level of assurance needed to support critical network and transaction servers.” It is not reasonable to believe that merely by representing an element of a client computer in a graphical manner will yield an improved “level of assurance” with respect to its network. Therefore, Appellant also asserts that a person of ordinary skill in the art would not combine the graphical representation described in *Franco* with the operating system of *McNabb* for the reasons asserted by the Examiner. That is, the Examiner has failed to identify any apparent reasoning why one of ordinary skill in the art would have combined the graphical representation feature of *Franco* with the teaching of *McNabb* in the manner relied upon by the Examiner in rejecting the claims.

Finally, Appellant notes that the Examiner has failed to explain how *Franco*’s presentation of information is believed to improve the operating system of *McNabb* in any meaningful way. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claims 1-3, 6-7, 9-19, and 21-24.

2. Lack of All Claim Elements

a. Independent Claim 1 and Dependent Claims 3, 6-7, and 9-11

As discussed in the *Appeal Brief*, the combination of *Franco* and *McNabb*, even if proper, fails to teach or suggest all of the elements of claim 1. *Appeal Brief* at pp. 12 and 13. For instance, the applied combination fails to teach or suggest a graphical representation of a compartment of a trusted operating system. The combination also fails to teach or suggest enabling the dragging and dropping of a graphical representation of an application on a graphical representation of a compartment, and automatically installing the application in the compartment.

The Examiner admits that *McNabb* does not teach or suggest a graphical representation of a compartment of a trusted operating system, but relies upon *Franco* as disclosing “a graphical

representation of a recipient computer.” *Examiner’s Answer* at p. 12. However, the passage of *Franco* relied upon by the Examiner only describes, in relevant part, copying a “file attachment” onto “a desktop or other location on the recipient computer (e.g., the ‘start’ menu).” *Franco* at col. 20, lns. 7-9. Appellant notes that, contrary to the Examiner’s position, a recipient computer’s “desktop” or “start menu” is not a graphical representation of the recipient computer itself. And, more importantly, a recipient computer’s “desktop” or “start menu” is not a graphical representation of a compartment of a trusted operating system, as recited in claim 1. As noted in the present specification, installing an application into a trusted compartment is significantly more complex than simply dragging and dropping files onto folders:

installing a new application in [a] compartment-based trusted operating system . . . is typically very cumbersome. The operator installing the new application, typically the system administrator, has to manually perform various tasks and has to keep track of various rules that control the flow of information.

Specification at p. 6, second full paragraph. Therefore, the combination of *Franco* with *McNabb*, even if proper, does not teach or suggest every element recited in claim 1. Dependent claims 3, 6-7, and 9-11 depend either directly or indirectly from claim 1, and thus are patentable for at least the same reasons. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claims 1, 3, 6-7, and 9-11.

b. Dependent Claim 2

Dependent claim 2 depends from independent claim 1, and thus it is patentable for at least the same reasons discussed above. Moreover, dependent claim 2 recites additional elements not taught or suggested by the applied art. For example, the combination of *Franco* and *McNabb*, even if proper, fails to teach or suggest automatically installing supporting resources associated with a selected application within a selected compartment, as recited in the claim. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claim 2.

c. Independent Claim 12 and Dependent Claims 14-16

As discussed in the *Appeal Brief*, the combination of *Franco* and *McNabb*, even if proper, fails to teach or suggest all of the elements of claim 12. *Appeal Brief* at pp. 14 and 15. For instance, the applied combination fails to teach or suggest a graphical representation of a plurality of compartments of a trusted operating system. Further, neither *Franco* nor *McNabb*, taken alone or in combination, teaches or suggests dragging and dropping an application on a graphical representation of a compartment and automatically installing the application in the selected compartment in response to such dropping.

Therefore, the combination of *Franco* with *McNabb*, even if proper, does not teach or suggest every element recited in claim 12. Dependent claims 14-16 depend either directly or indirectly from claim 12, and thus are patentable for at least the same reasons. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claims 12 and 14-16.

d. Dependent Claim 13

Dependent claim 13 depends from independent claim 12, and thus it is patentable for at least the same reasons discussed above. Moreover, dependent claim 13 recites additional elements not taught or suggested by the applied art. For example, the combination of *Franco* and *McNabb*, even if proper, fails to teach or suggest automatically installing supporting resources associated with a selected application within a selected compartment, as recited in the claim. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claim 13.

e. Independent Claim 17 and Dependent Claims 19 and 21

As discussed in the *Appeal Brief*, the combination of *Franco* and *McNabb*, even if proper, fails to teach or suggest all of the elements of claim 17. *Appeal Brief* at pp. 16 and 17. For instance, the applied combination fails to teach or suggest a graphical installation tool for application in a compartment of a trusted operating system. Further, the applied combination

fails to teach or suggest a graphical user interface comprising a display portion displaying at least one compartment of a trusted operating system. Further still, neither *Franco* nor *McNabb* teaches or suggests dragging and dropping of a graphical representation of an application on a graphical representation of a compartment to cause automatic installation of the application in the compartment.

Therefore, the combination of *Franco* with *McNabb*, even if proper, does not teach or suggest every element recited in claim 17. Dependent claims 19 and 21 depend either directly or indirectly from claim 17, and thus are patentable for at least the same reasons. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claims 17, 19, and 21.

f. Dependent Claim 18

Dependent claim 18 depends from independent claim 17, and thus it is patentable for at least the same reasons discussed above. Moreover, dependent claim 18 recites additional elements not taught or suggested by the applied art. For example, the combination of *Franco* and *McNabb*, even if proper, fails to teach or suggest means for automatically installing supporting resources associated with a selected application within a selected compartment, as recited in the claim. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claim 18.

g. Independent Claim 22 and Dependent Claim 24

As discussed in the *Appeal Brief*, the combination of *Franco* and *McNabb*, even if proper, fails to teach or suggest all of the elements of claim 22. *Appeal Brief* at p. 18. For instance, the applied combination fails to teach or suggest installing an application in a compartment of a trusted operating system, and fails to provide any teaching or suggestion of a method for such installation. Further, the combination fails to teach or suggest enabling association of a selected application with a compartment of a trusted operating system. Further still, the combination fails to teach or suggest automatically installing the selected application in

the selected compartment in response to the association of the selected application with the selected compartment.

Therefore, the combination of *Franco* with *McNabb*, even if proper, does not teach or suggest every element recited in claim 22. Dependent claim 24 depends from claim 22, and thus it is patentable for at least the same reasons. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claims 22 and 24.

h. Dependent Claim 23

Dependent claim 23 depends from independent claim 22, and thus it is patentable at least for the reasons discussed above. Moreover, dependent claim 23 recites additional elements not taught or suggested by the applied art. For example, the combination of *Franco* and *McNabb*, even if proper, fails to teach or suggest a graphical representation of a compartment, and also fails to teach or suggest enabling dropping of a graphical representation of an application on a graphical representation of the compartment, as recited in the claim. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claim 23.

B. Rejections Under 35 U.S.C. § 103(a) over *Franco* in view of *McNabb* and *Bearden*

Claims 4-5, 20, and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Franco* in view of *McNabb* and further in view of *Bearden*. *Examiner's Answer* at p. 7. Appellant respectfully traverses these rejections for the reasons stated on pages 19 and 20 of the *Appeal Brief*.

C. Rejection Under 35 U.S.C. § 103(a) over *Franco* in view of *McNabb* and *Anderson*

Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Franco* in view of *McNabb* and further in view of *Anderson*. *Examiner's Answer* at p. 10. Appellant respectfully traverses these rejections for the reasons stated on page 20 of the *Appeal Brief*.

IV. CONCLUSION

Appellant respectfully requests that the Board overturn the rejections of pending claims 1-25 for the above reasons.

Respectfully submitted,

By: 

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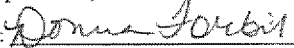
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Dated: September 10, 2007

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